



PROPOSED WEST HAVEN SETTLEMENT CONCERNING SEWAGE DISCHARGES

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QUESTION

Provide a summary of the proposed settlement of a federal Clean Water Act (CWA) enforcement case against the City of West Haven related to its wastewater collection and treatment system.

SETTLEMENT IMPLICATIONS

West Haven's recent settlement with state and federal regulators highlights potential liability under the federal Clean Water Act (CWA) for municipalities operating wastewater systems. Under the terms of [the settlement](#), the city must pay a civil penalty of \$125,000 and take remedial measures expected to cost \$17.1 million to prevent future violations. Generally, any entity operating a municipal wastewater system is required to have a CWA permit limiting the amount of pollution that may be discharged into protected waters. Any municipality violating the terms of the permit is potentially subject to an enforcement action.

SUMMARY

The U.S. Environmental Protection Agency (EPA) currently has a national enforcement initiative designed to address violations of the CWA by municipal sewer systems. Specifically, the initiative addresses raw sewage overflows and bypasses that introduce harmful pollutants into the environment. In December 2013, EPA initiated a civil enforcement action against West Haven for alleged violations of the CWA resulting from the city's operation of a wastewater collection and treatment system. According to EPA, there were more than 300 overflows and bypasses in the city's system between January 2007 and June 2011, each of which is a violation of the city's permit and the CWA.

West Haven and EPA reached a proposed settlement shortly after the lawsuit was filed. Under the terms of the settlement, West Haven will pay a civil penalty of \$125,000, plus 3% interest, in installments over the course of two years. Additionally, the city has agreed to take certain remedial measures designed to improve

the capacity, management, operations, and maintenance of the city's system and to prevent future violations. These measures are expected to cost the city about \$17.1 million.

While this settlement is only binding on the parties to the enforcement action, it highlights potential CWA liability of other municipalities in Connecticut. State law, as well as CWA permits, require the reporting of overflows and bypasses to the Connecticut Department of Energy and Environmental Protection (DEEP). These self-reported violations are potentially the basis for similar enforcement actions.

BACKGROUND OF WEST HAVEN VIOLATIONS

West Haven owns and operates a wastewater collection and treatment system that serves about 52,630 people in West Haven and parts of neighboring Orange. To operate this system, the city is required to obtain a CWA pollution discharge permit. The permit is issued through the National Pollutant Discharge Elimination System (NPDES) program. NPDES permits cover point source pollution and set effluent limits for dischargers.

Under the terms of this permit, as well as state regulations, West Haven is required to report any bypass of the city's collection system to DEEP. It is routine practice for DEEP to share these reports with the EPA upon request. Numerous bypass reports led EPA to initiate a civil enforcement action against the city to impose a penalty and seek remedial measures designed to prevent further violations.

In this case, the violations are the result of (1) wet-weather overflows and bypasses and (2) dry-weather overflows attributed to system blockages.

Wet-weather overflows tend to be caused by inundation of the system by rain water that exceeds the facility's capacity. These inundations are linked to two important contributing factors. Ground saturation during wet-weather can cause ground water and rain water to infiltrate the collection system through defects in the system. Similarly, homeowners contribute to the inundation through sump pumps, down spouts, and yard and foundation drains connected to the collection system. When the system is overwhelmed, untreated wastewater can be discharged, which is a permit violation. EPA attributed about 101 of West Haven's overflows to these types of wet-weather conditions.

Dry-weather overflows tend to be caused by collection system blockages. In these instances, a physical barrier becomes lodged in a conveyance in the collection system and forces wastewater backup behind the clog. EPA's investigation found about 208 of these types of backups resulting in the discharge of raw sewage into

homes and other structures. These backups are often caused by the improper discharge of fats, oils, and grease into the collection system. Other causes may have included debris deposits in the collection system and root intrusion.

DETAILS OF THE PROPOSED SETTLEMENT

The settlement requires West Haven to pay a civil penalty of \$125,000 and take further remedial measures to prevent future violations. The civil penalty will be split between the federal and state governments, with each receiving \$62,500 plus interest in installments over a two-year period.

Many of the remedial measures included in the settlement agreement are standard requirements issued when a municipality has a history of overflows and backups from the wastewater system. Generally, these measures cover issues associated with the capacity of the system as well as the management, operations, and maintenance of the collection system. In particular, the settlement contains provisions designed to address specific concerns with fats, oils, and greases (FOG) in West Haven's system. The city is required to implement a program, known as a FOG Program, to ensure FOG accumulations do not disrupt West Haven's system.

The settlement's remedial measures are expected to cost West Haven about \$17.1 million.

FINALIZING THE PROPOSED SETTLEMENT

This West Haven enforcement action was initiated by EPA, the U.S. Department of Justice (DOJ), and DEEP. A proposed settlement was reached on December 19, 2013, and filed with the U.S. District Court for the District of Connecticut. By DOJ regulation, all proposed settlements concerning pollution discharge are subject to a minimum 30-day public comment period. All comments received by DOJ are reviewed by the department to determine whether the proposed settlement is appropriate and adequate. DOJ may withdraw the proposed settlement if any comments received give the department reason to believe the settlement is no longer advisable. The comments are filed with the presiding judge for review. The judge then decides whether to accept the settlement and issues any necessary orders. The public comment period for this settlement ends on January 27, 2014.

STATUTES IMPLICATED

The federal CWA prohibits the discharge of pollutants into waters of the United States except in compliance with the terms of a permit issued under Section 402 of the CWA (33 U.S.C. § 1311). In particular, facilities like West Haven's wastewater

treatment facility are covered by the CWA's NPDES permit program. This program is designed to control point-source discharges of pollution into waters of the United States. DEEP and its predecessor agencies have been administering the NPDES program in Connecticut since 1973 under state law (CGS § [22a-430](#)).

Generally, an NPDES permit contains effluent limitations, monitoring and reporting requirements, individualized conditions applicable to the individual permittee, and standard conditions applicable to all NPDES permits. The details of each permit vary based on the permittee's circumstances.

The CWA empowers the EPA to bring a civil enforcement action against any NPDES permit holder for violating of the terms and conditions of its permit (33 U.S.C. § 1319(b)). Because NPDES permit conditions are set in a permitting proceeding specific to each permittee, actions that violate one permit's terms will not necessarily violate another permit's terms.

EPA'S NATIONAL ENFORCEMENT INITIATIVE

Every three years, EPA chooses particular environmental problems on which to focus agency resources and expertise. These are known as national enforcement initiatives and each initiative is selected with input from states and the public. EPA has focused on pollution problems caused by municipal wastewater collection and treatment systems since 2008 and is currently planning to continue this initiative through 2016. Generally, the systems covered by this initiative are permitted under the NPDES program.

In Connecticut, DEEP receives compliance reports from NPDES permittees, including self-reported discharge violations. It is routine for DEEP to share these records with EPA, which then uses these records to identify permittees that warrant more detailed review. While the CWA provides for enforcement authority to be shared between state and federal authorities, EPA has taken the lead on these compliance issues due to limited resources and staffing at DEEP, according to DEEP.

IMPLICATIONS FOR OTHER MUNICIPALITIES

While this settlement has no explicit implications for any entity other than the parties to the settlement, it highlights potential enforcement issues other operators of wastewater systems might face. Recently, an EPA contractor reviewed records of New Haven's compliance with the CWA, though it is unclear if this review will result in an enforcement action.

More generally, any public or private entity conducting any activity covered by an NPDES permit is potentially subject to enforcement actions for violating the terms of the permit.

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